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Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities
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Letter dated 7 October 2005 from the Chairman to all members of the Committee

1. You will recall that I indicated, at the end of the meeting of the Ad Hoc Committee in August 2005, that I would prepare a text reflecting the work of the Committee to date in streamlining the draft Convention, and making suggestions as to how some of the differences of view might be bridged. That text has now been completed and I am submitting it to you (see annex I).

2. Let me say at the outset that I have not attempted a wholesale rewriting of the draft Convention. We have made extremely good progress towards coming up with generally agreed language in many areas, as reflected in the annexes to our meeting reports, and in those instances my approach generally has been not to tamper with that language. I have not tried to reinvent the wheel. Otherwise we will be starting all over again, and not building on the considerable progress we have made. After all, the text that we have to end up with is one that the Committee considers best, not what the Chair considers best, and that has been my fundamental guiding principle.

3. My approach has been to work through detailed notes of the discussion, which I have compared with the Working Group text and the texts that we came up with in the annexes to our reports, particularly where various alternatives have been proposed, to see how and if particular differences can be bridged. You will recall that there were also many instances where we deferred issues with the intention that they be taken up elsewhere, and I have carefully tried to ensure that nothing has been lost. The other challenge has been to reduce the amount of duplication and detail, although I have been generally cautious in reducing detail where we appear to have generally accepted text that is detailed.

4. In the course of this work I have also referred to and drawn on the work of the facilitators, to whom I should once again like to express my appreciation. As you know, although the facilitators' texts are at diverse stages of refinement — many

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have not yet been reported back and discussed in detail by the full Committee in meetings or still leave many issues outstanding — so I have been cautious in drawing on those facilitators' texts where there has been only a preliminary discussion of them. I have also kept in mind that in some instances it was quite specific issues that were referred to the facilitators' groups for further work. It goes without saying that facilitators' texts or revised facilitators' texts that can command a greater level of support than our other texts, can contribute significantly to advancing our work.

5. Finally, by way of general comment, let me say that the Chair's text is a good-faith attempt to come up with a text that can bring us closer to general agreement. I hope that it will therefore be the basis for the next stage of our work, when we move to negotiations in January.

6. Colleagues therefore need to come to the meeting in January 2006 prepared to negotiate on the basis of this text. In this respect, let me repeat the mantra that "the perfect is the enemy of the good". I would urge colleagues not to come to the January meeting with wholesale proposals for new language. We need to move past that stage. Please consider the Chair's text on the basis of what you can accept, not what you would prefer. Or, as some colleagues put it during our last meeting, "what you can live with, not what you love". Only by taking this approach will we be able quickly to conclude our work.

7. Accordingly, at the January meeting, I will be asking colleagues whether there is anything in the attached text that they absolutely cannot accept. Any suggestions for improvement or change that do not quickly draw a consensus will have to be forgone, or we will find ourselves engaged in a protracted process that has no end.

8. I would also remind colleagues that drafting issues can be taken up in the drafting committee that we will need to establish at the final stages of our process. Accordingly, we should not now be taking up time with purely drafting issues.

9. You will recall that at the end of our last meeting we had a discussion of the structure of the draft Convention. As we are now moving to a new stage of our work, I have therefore restructured it reflecting that discussion as best I can. I have also separated the draft Convention into four parts, consistent with the approach in other conventions. I have not separated civil and political rights from economic, social and cultural rights, as there were strong views that this should not be done. For ease of reference I have attached two charts comparing the old and new structures (annex II).

10. For the first time in our draft Convention, I have included draft final clauses. These are drawn primarily from the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. As these are purely technical provisions, they should not create difficulty.

11. I hope that the following commentary will assist colleagues in identifying some of the changes and suggestions I am making regarding specific articles, and the reasons behind them. References are made to the reports on the fourth, fifth and sixth sessions, respectively, of the Ad Hoc Committee (A/59/360, A/AC.265/2005/2 and A/60/266) and to the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the International Covenant on Civil and Political Rights, the International Covenant on Economic,

Social and Cultural Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Preamble

12. Although there has not been a very detailed discussion of the preamble, I have made some changes on the basis of the discussion so far. They relate to preambular paragraphs (e), (h), (i) and (o). I should note that I have not expanded the list in preambular paragraph (m) as had been suggested by some, because the current list is identical to other treaties, and colleagues may therefore wish to retain it on that basis. The numbering of the preambular paragraphs ((a), (b), (c), etc.) has been retained for the moment for ease of reference, but this will be removed in the final Convention. As you know, it is the usual practice to finalize the preamble last. I do not expect that the preamble will prove controversial.

Article 1. Purpose

13. Article 1 has been revised in the light of the discussion. We will later need to consider, however, whether we need this article at all. That depends on what we do with the title of the draft Convention, because the existing title actually contains the purpose of the draft Convention, i.e., the "protection and promotion of the rights and dignity of persons with disabilities". Article 1 may therefore be repetitive at least, and at worst potentially confusing if it sets out a "purpose" that is different from that contained in the title. I would also note that it is not the practice in other treaties to have a "purpose" provision, although some have a "scope" provision.

Article 2. Definitions

14. I have slightly reordered the language in the definition of "Communication" so as to make it consistent with the order we agreed in article 13 (which is now article 21).

15. I have moved several definitions from the body of the Convention into this article (see "Discrimination on the basis of disability" and "Reasonable accommodation"). Those definitions have had detailed discussion in the context of the relevant articles.

16. We have not discussed a definition for "Accessibility", and I suggest that we do not need one. We have a separate article on this.

17. Views are divided as to whether it is necessary to define "Disability" and "Persons with disabilities". I tend to think that we don't, as this will be very difficult, and there is a risk that we will unintentionally exclude someone.

18. I should note that we had not been consistent throughout the draft Convention in how we referred to persons with disabilities. In some instances we had referred to "all" persons with disabilities, in others not. I have deleted the word "all" from those provisions where it was found, which is consistent with the approach in other conventions.

19. The definition of "Discrimination on the basis of disability" did not include the words "on the basis of disability", so I have included that key element. I would also note that we had not been consistent in our usage of this term throughout the draft Convention; in some places we had used "on the basis of disability", in other

places we had used "on account of disability", for example. I have made the text consistent, so that it uses "on the basis of disability".

20. I have suggested a definition for "Universal design" and "Inclusive design", which I think would be useful as these are not commonly understood concepts. The definition I have suggested is taken from the website of the North Carolina State University Center for Universal Design.

21. I have also suggested the inclusion of a definition of "National laws of general application" and, similarly, "national laws and procedures of general application" and "national laws, customs, and traditions of national application". The background and explanation for this is given under article 23 (below).

Article 3. General principles

22. Article 3 has been revised, with a slightly reworded subparagraph (c), and two additional subparagraphs (f) and (g), which received a good level of support.

Article 4. General obligations

23. A recurring issue that came up in the discussion of many articles was the inclusion of language relating to the progressive realization of economic, social and cultural rights. While the principle was accepted, it is repetitive and often difficult to include such language in individual articles, since many of them contain a hybrid of civil and political, and economic, social and cultural rights, including non-discrimination. I think there was general agreement to include a generic provision in article 4 to cover this matter, and this is included as paragraph 2. I have drawn on the language from the facilitator's group and article 4 of the Convention on the Rights of the Child, which takes a similar approach, and have also made it clear that non-discrimination is not for progressive implementation. You will recall that the latter point is a very important one for some delegations, and when I specifically put it to the meeting no one disagreed with it (see also A/59/360, annex II, para. 7).

24. By including this generic provision in article 4 there should be no need to repeat the matter of progressive implementation in any of the subsequent articles, which would be both messy and complex for the reasons noted above.

25. There were some questions raised in the facilitator's group about including the phrase "within their jurisdiction" in the chapeau to article 4 (1). As it causes difficulties for some, I suggest we delete it, as clearly States parties cannot take action where they have no jurisdiction.

26. I have consolidated into paragraphs 1 (f) and (g), the elements contained in old draft articles 13 (d), 19 (2) (e), 20 (c) and 21 (f) (see ibid., para. 9).

27. I have consolidated into paragraph 3, the elements contained in old draft articles 5 (2) (d), 6 (c), 18 (c), 19 (2) (g) and 21 (m) (see ibid., para. 10).

28. In both instances I have endeavoured to ensure that no elements have been lost.

29. You will recall that we had a brief discussion on the need for a provision stipulating non-derogation from existing rights, and there was a suggestion that it might be incorporated in article 4. I have accordingly incorporated such a provision, which is drawn from article 41 of the Convention on the Rights of the Child and

article 23 of the Convention on the Elimination of All Forms of Discrimination against Women, into paragraph 4.

30. The draft article is otherwise essentially unchanged from the Working Group text. You may recall that there was some discussion in the facilitator's group about the possibility of restructuring this article, but that proved quite complex and did not progress. As we should now be focusing on substance, I believe that the Working Group structure for this article should be generally acceptable, and my notes of the meeting support that.

31. I hope, therefore, that we can rapidly conclude this article.

Article 5. Equality and non-discrimination

32. Article 5 was considerably refined in the facilitator's group and in the main meeting. The text is now well developed.

33. As noted above, I have moved the definitions of "discrimination on the basis of disability" (A/59/360, annex V, paras. 22 and 23) and "reasonable accommodation" (ibid., para. 27) from this article to article 2 on definitions.

34. As regards paragraph 2 (a) of the Working Group text, some delegations proposed including denial of reasonable accommodation within the definition of "discrimination", on the basis of International Covenant on Economic, Social and Cultural Rights general comment No. 5. This would lead to a problem if "discrimination" is excluded from the scope of progressive realization in article 4 (2), because in practice many States are unlikely to be able to provide reasonable accommodation immediately. I would also note that including denial of reasonable accommodation within the definition of "discrimination" was opposed by some delegations for other reasons, including because it would lead to uncertainty and lack of clarity.

35. There were proposals to expand the listing in paragraph 2 (b) of the Working Group text, but these were opposed by some delegations as too detailed.

36. As regards paragraph 3 of the Working Group text (which does not appear in any other core human rights treaty and on which a consensus is clearly not possible), I suggest that the existence of the Human Rights Committee's general comment relating to article 26 of the International Covenant on Civil and Political Rights should in itself go some distance to meeting the concerns of those delegations supporting this Working Group paragraph.

37. To avoid the "special"/"positive" measures dilemma, I suggest we delete the adjective as was supported by many delegations. This is not an issue of substance. I have suggested an abbreviated formula for this paragraph as a whole. By including only measures that are necessary to accelerate or achieve de facto equality, I hope we can meet the concerns of various delegations regarding this paragraph.

38. I expect, therefore, that this article should be concluded quickly.

Article 6. Women with disabilities

39. You will recall that discussion was continuing under the auspices of the facilitator as to the need for a separate article dealing with women with disabilities, or whether this could be covered in other parts of the draft Convention. As this

fundamental issue has not been resolved, article 6 appears in square brackets without text.

40. There was clearly agreement that disabled women are at a particular disadvantage and vulnerability and that their situation needs to be appropriately covered by the draft Convention. The divergence among States on this issue is mainly with respect to placement rather than substance.

41. I would urge delegations to come to the next session of the Ad Hoc Committee with flexible instructions that would enable them to reach agreement on this, whatever the outcome, so that they are able to join in whatever consensus appears to be emerging. This will then enable further discussion to take place, and for us to agree at the next meeting on the appropriate way of dealing with this and also on appropriate language. We cannot afford to be held up by such differences of approach.

Article 7. Children with disabilities

42. Here we face a similar issue, i.e., whether there should be a separate article on children with disabilities, or whether the particular disadvantages and vulnerabilities of children with disabilities should be dealt with in a separate article or alternative approaches. The Working Group text for this article is based on article 23 of the Convention on the Rights of the Child. There has been an argument that the inclusion of a specific article in that Convention on the rights of children with disabilities has to some extent been counterproductive, because States parties have normally reported on compliance article by article; i.e., due to the specific article of the Convention on children with disabilities there has been a tendency not to mainstream disability throughout the Convention. At the same time, it is clear that inclusion of article 23 has been influential and useful in highlighting and identifying issues faced by disabled children.

43. That said, the wording for article 7 as found in the Working Group text did not receive a great deal of support, and it is clear that many delegations have problems with it. It did not receive general agreement as a good basis for our future work. I have therefore treated this article the same way as article 6, and left it blank (see also A/60/266, annex II, para. 27).

44. My general comments relating to article 6 apply equally in respect of article 7. I would urge colleagues to come to the next session with flexible instructions that would enable them to accept either a separate article on children with disabilities or the alternative approaches, so that they can join in an emerging consensus. We cannot afford to be held up on this important issue because of disagreement as to the modalities for handling it.

Article 8. Raising awareness regarding disability

45. The text of article 8 has been redrafted to reflect the outcomes of the discussion in the Committee meetings and in the facilitator's group. I have however deleted the phrase "and in a manner consistent with the overall purpose of the Convention" from the end of paragraph 1 (c) (see A/59/360, annex III, para. 14), as it has no clear meaning in this context. As noted above, the previous paragraph 2 (d) has been moved to article 4 (3).

46. There was concern that paragraph 2 of the Working Group text was overly prescriptive, and many delegations proposed the merging of paragraph 2 into paragraph 1. Others however were concerned that substance might be lost, as they deal with different concepts. I would therefore suggest that a compromise might be to use a slightly softened chapeau to this paragraph.

47. I therefore hope that draft article 8 can also be rapidly concluded.

Article 9. Accessibility

48. In paragraph 2 (d), I suggest we can use "ensure", as the chapeau contains the qualification of "appropriate measures".

49. I have inserted some additional subparagraphs into paragraph 2, reflecting the discussion at the fifth session (see A/AC.265/2005/2, annex II, para. 89). Subparagraphs (f) and (g) are taken from the facilitator's text on article 13 (now 21), the relevant provisions of which it was agreed to take up under article 19 (now 9). Similarly, the new subparagraph (h) is taken from article 13 (e) of the Working Group text (ibid., para. 82). I would note that article 13 (j) of the facilitator's text is now included in article 4 (1) (f) (ii).

Article 10. Right to life

50. I suggest that the language previously proposed at the fifth session (ibid., para. 11), best reflects the discussion of this article. I hope that we can quickly reach agreement on it.

Article 11. Situations of risk

51. You will recall the discussion relating to the need for the protection of persons with disabilities in situations of risk to the general population. I hope that the language that I proposed at the fifth session (ibid., para. 12) drawing on article 38 (4) of the Convention on the Rights of the Child, which is replicated in the new text, can quite quickly provide a basis for consensus.

Article 12. Equal recognition as a person before the law

52. The main issue here was the legal capacity of all persons with disabilities. This particular issue clearly requires further consideration by delegations, and I have left square brackets reflecting this.

53. I would ask all delegations to come to the next session prepared to resolve this issue. We need to take into account the different legal systems, but I hope that delegations can be as flexible as possible, bearing in mind that guardianship or substitute decision-making for persons with disabilities has led to many injustices in the past. I hope it will be possible to resolve this matter by distinguishing between (a) the possession of legal capacity by all persons, and (b) the exercise of that capacity, which may require the provision of assistance in some circumstances. I note that the Convention on the Elimination of All Forms of Discrimination against Women in article 15 (2), for example, uses the term "legal capacity" and in the same paragraph refers to "exercising" that capacity; it does not refer to "capacity to act". I therefore suggest that we stick to the term "legal capacity" as used in that Convention, which would mean deleting the language in the last set of square brackets in the chapeau to paragraph 2.

54. As regards paragraph 2 (b), you will recall that there was no agreement on the necessity for specific language on this in the light of the provisions of paragraph 2 (a) on assisted decision-making (ibid., para. 22). Paragraph 2 (a) clearly envisages a wide spectrum of "assistance" depending on the circumstances of each case, which in the view of some delegations may make paragraph 2 (b) redundant. I would therefore ask colleagues to consider whether paragraph 2 (b) might not be deleted, and in the meantime I have placed square brackets around it, reflecting disagreement over the necessity for it.

Article 13. Access to justice

55. I have included this as a separate article dealing with access to justice, as was supported by a number of delegations. As it is quite a brief article, however, you may wish to consider whether its elements might not better be left in article 12.

56. You will recall that at the fifth session (ibid., para. 15), it was agreed that the issues in old article 9 (d), (e) and (f) of the Working Group text were to be addressed in other articles of the draft Convention. I considered including them in article 13, but they do not really fit here. Accordingly I have combined these elements and left them in article 12.

Article 14. Liberty and security of the person

57. You will recall that there was extensive discussion around the need for a qualifier such as "solely" or "exclusively" before the words "on disability", in paragraph 1 (b) (ibid., para. 27). Some delegations strongly supported those words, but many opposed them. I suggest that the third alternative in square brackets (ibid., para. 28) should be an acceptable compromise, and think we came close to that point in our discussions. I have revised the text accordingly, and urge all delegations to accept this outcome.

58. In the chapeau to paragraph 2, I suggest we remove the square brackets, as there was considerable support for the bracketed language.

59. In paragraph 2 (b), the word "promptly" is found in other Conventions (see, for example, articles 9 (2) and 14 (3) (a) of the International Covenant on Civil and Political Rights, and article 40 (2) (b) (ii) of the Convention on the Rights of the Child), and was widely supported in our discussions, and I suggest that we also follow that approach here.

60. I also suggest that we remove the square brackets in paragraph 2 (c) (i), as I don't think that the bracketed language creates major problems for delegations. I hope that we can also reflect the provisional agreement on paragraph 2 (c) (ii) by removing the square brackets around it. I do not believe it should cause major problems for delegations.

61. You will recall that there was general agreement that there should be a provision for compensation for persons with disabilities in the event of an unlawful deprivation of liberty. I suggest that in paragraph 2 (d) we draw on both of the square bracketed provisions relating to this, and article 9 (5) of the International Covenant on Civil and Political Rights, and have included language accordingly.

Article 15. Freedom from torture or cruel, inhuman or degrading treatment or punishment

62. In paragraph 2, I suggest that we follow the formula used in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 2 (1), which refers to "legislative, administrative, judicial or other measures" and was supported by a number of delegations. It is not necessary to amplify it further, and doing so could create interpretive difficulties as against the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

63. As regards the matter of monitoring of facilities and programmes (ibid., para. 42), I should note that the Committee subsequently incorporated this into article 12 (3) (ibid., para. 53).

Article 16. Freedom from exploitation, violence and abuse

64. Given the difficulties we experienced in getting agreement as to the various forms of violence and abuse that should be listed, I suggest that we stick with the generic phrase "all forms of exploitation, violence and abuse" in paragraph 1. However, should colleagues insist that some form of listing is required, I suggest we use the listing in article 19 (1) of the Convention on the Rights of the Child.

65. Many colleagues gave considerable emphasis to the inclusion of "exploitation" in this article. I therefore suggest that "exploitation" be included in the title, and that it be coupled with "violence and abuse" where that phrase appears throughout the article.

66. In paragraph 2, I suggest that we remove the square brackets and also include reference to families and caregivers, since the latter part of that paragraph (i.e., providing information on how to recognize instances of violence and abuse) would logically seem to be directed at families or caregivers rather than persons with disabilities themselves. I would note that there was also considerable support during our discussion to including a reference to families and caregivers here.

67. In paragraph 3, the major issue was what facilities and programmes should be covered by it; there was concern that its scope should not be so broad as to cover banking facilities, for example, and the facilitator's proposal seems to cover this well.

68. In paragraph 4, most of the language in square brackets was well supported in our discussion, although it was questioned whether including "worth" was appropriate in this particular context, and I suggest it should be deleted.

69. "Protection services" have been removed from the end of paragraph 5, since they are already covered in paragraph 4.

Article 17. Protecting the integrity of the person

70. In paragraph 1, the qualification of "physical and mental" integrity was not strongly supported, and it could imply a right of intervention that does not otherwise apply. I therefore suggest we delete it.

71. Paragraph 4 is in square brackets, as there were quite strong differences of view as to whether it was necessary to include it.

Article 18. Liberty of movement

72. You will recall that there was agreement that language on liberty of movement should be included (see A/60/266, annex II, para. 76). There was no Working Group text on this. I have therefore included a more abbreviated version of the Kenyan proposal, which drew some general support from several other delegations but was not discussed in detail.

Article 19. Living independently and being included in the community

73. In the chapeau, I suggest we use the word "facilitate", which is then subsequently balanced by the stronger word "ensuring", and that we use both "inclusion" and "participation" since both words were supported by quite a wide range of delegations.

74. As regards subparagraph (a) there appeared to be no difference of view over substance — i.e., that persons with disabilities should not be obliged to live in a particular living arrangement, including institutions — but some delegations were concerned that saying that persons with disabilities were not obliged to live in an institution implicitly approved of the use of institutions per se. I therefore suggest that we not specifically refer to "institutions" here, as this is included in the generic term "particular living arrangement" anyway.

Article 20. Personal mobility

75. Although there was initially support for merging old articles 19 and 20, this weakened as the discussion went on and several delegations subsequently supported the retention of a separate article 20 as it deals with individual mobility rather than accessibility. While there was clearly agreement that the duplication between the two articles should be removed, there was concern that elements might be lost in a merger of the two. I have therefore retained a shorter article 20, which contains those elements not already in article 19 (now 9). If colleagues do want to combine both articles that should not be too difficult.

76. I would note that training, which is dealt with in subparagraph (c), comes up in a great many places throughout the draft Convention (see, for example, articles 8, 9, 24, 25 and 26). I have not attempted a consolidation of the training provisions in article 4, as some of them are quite specific, but colleagues might want to bear that possibility in mind.

Article 21. Freedom of expression and opinion, and access to information

77. A wide variety of views was expressed regarding the various options in square brackets in subparagraph (a) (see A/AC.265/2005/2, annex II, paras. 73-75). On the one hand it was considered desirable to ensure the widest provision of official material to persons with disabilities in accessible formats; on the other hand there was recognition that an unreasonable burden should not be placed on Governments. I have suggested a compromise, which needs to be read carefully in the light of the chapeau, and also the subsequent subparagraphs.

78. The elements contained in the previous subparagraph (c) now appear to be adequately covered in article 24.

79. The former subparagraph (d) has been consolidated with similar provisions elsewhere and moved to article 4 on general obligations (ibid., para. 81).

80. I have moved the former subparagraph (e) to article 9 (2) (h), as there was quite a lot of support for doing this (see also ibid., para. 82).

81. In the former subparagraphs (f) and (g), now (c) and (d), there was considerable support for "urging" as the middle ground between "encouraging" and "requiring", and I hope we can quickly agree on this. I have also included reference to the Internet here, as there was strong support for this. (I have also included the Internet in article 9 (2) (f), as we are there dealing with technology whereas in article 21 we are dealing more with content.)

82. There was no agreement on the inclusion of a subparagraph regarding a national sign language, and I have therefore bracketed that provision.

Article 22. Respect for privacy

83. I have added a new paragraph dealing with privacy of medical information, which we deleted from article 21 (now 25) on health on the basis that it needed to be covered here (ibid., para. 84).

Article 23. Respect for the home and the family

84. Article 23 raises a general issue, in this instance relating to personal and family issues that also comes up elsewhere. We have all agreed on numerous occasions during the discussions, that the Convention is not intended to pronounce on, change or attempt to influence the general rules that apply to the population as a whole in different countries and cultures on sensitive questions such as (for example) family planning issues (see ibid., paras. 94, 99, 100 and 110; and A/60/266, annex II, para. 85).

85. What the Convention is intended to do on such issues is simply to ensure that persons with disabilities are treated no differently from others in the population. These provisions are essentially just non-discrimination clauses. In other words, on these issues, people with disabilities should be subject to the same values, rules and customs that generally apply to the whole population, and not a different set of standards. That understanding would allow each State party to retain its own distinct values, traditions and cultures, and continue to determine its national laws and policies on such issues for itself.

86. There have been various proposals for amendments to achieve this understanding, such as to make these provisions "subject to national law/customs/traditions", etc. The problem with such an open-ended formula, however, is that if national law/customs/traditions permit persons with disabilities to be treated differently, then we are potentially legitimizing or recognizing such differentiation of treatment. We therefore need a different formula. The phrase "national laws, customs, and traditions of general application" might be one approach. If we understand the phrase to mean "national laws, customs and traditions of application to society as a whole and which do not differentiate in respect of persons with disabilities" then the ability for States parties to continue to determine their own standards is retained, and the purely non-discrimination approach of the provision is made clear.

87. When this issue has been raised during the discussions there has been no objection to the concept. I would invite delegations, therefore, to consider this phrase that, as you will have seen, I have defined in article 2 to ensure that the point is adequately covered.

88. I would also note that in some instances the point can be captured by using the phrase "on an equal basis with others" as we have in the chapeau of paragraph 1 of this article. You will recall that this was the intention behind adding this phrase to the chapeau, although there is now another proposal in square brackets to repeat the point in a different way in paragraph 1 (a) and (c).

89. In paragraph 2, I suggest that we use the same formula used in article 16 (1) (f) of the Convention on the Elimination of All Forms of Discrimination against Women.

90. In paragraph 3, as suggested earlier we should be using the same phrase consistently throughout the Convention, and therefore should say here "on the basis of disability".

91. There was discussion regarding the best placement of paragraph 4 (see A/AC.265/2005/2, annex II, para. 122), and I have included it in article 8 (2), which deals with combating negative perceptions and stereotypes.

Article 24. Education

92. The report on article 24 in A/60/266 has a detailed account of the discussion in the Committee meeting, and also the text discussed. The text for article 17 (now 24) was subsequently much further developed in several meetings that the facilitator was able to convene on this article. Although there was not time for this to be reported back in detail and discussed in the Committee meeting, my sense is that the text from the facilitator's group is regarded by many delegations as a considerable improvement. As the main changes are structural rather than substantive, I have therefore adopted this text as the basis for article 24.

93. You will note that the promotion of the linguistic identity of the deaf community (para. 3 (b)) is already covered in article 30 (4). I have left both in for the time being, although colleagues might like to reflect on the most appropriate place for this reference.

94. Employing teachers with disabilities has come up on several occasions, not least by way of role models, and I have included this in paragraph 4.

Article 25. Health

95. You will recall that there was general agreement that article 21 (now 25) should be split into two, dealing separately with the right to health in article 21 and habilitation and rehabilitation in article 21 bis (now 26) (A/60/266, annex II, para. 77). I have therefore drawn on the facilitator's text for this article and for article 26, as the facilitator's group was able to refine this over several meetings.

96. I suggest that in the chapeau we use the word "recognize" since this is found in other conventions such as the International Covenant on Economic, Social and Cultural Rights (article 12 (1)) and the Convention on the Rights of the Child (article 24 (1)). It is not necessary to reaffirm that States parties shall ensure that no person with a disability is deprived of that right — we have not done that with

regard to other rights elsewhere in the text. As regards the issue of "free" or "affordable" health services, I note that general comment No. 14 on article 12 of the International Covenant on Economic, Social and Cultural Rights refers to "affordability" of health services, and suggest we use that word. In some individual cases, of course, for health services to be affordable they would actually need to be free. I note that the issue of affordability and cost also arises in some other articles (see, for example, article 28 (2) (a)). In subparagraph (c), it should not be necessary to use "endeavour to", as this obligation is already qualified by the phrase "as close as possible".

97. Health and life insurance has been moved from article 28 into subparagraph (e), and I have attempted a formula that I hope will bridge the difference of views over this.

Article 26. Habilitation and rehabilitation

98. As we have no Working Group text for an article specifically on habilitation and rehabilitation, I have drawn on the facilitator's text, relevant elements from the Working Group text on health and the proposal of the European Union which received support, so as to ensure that no key elements are lost. Although this text is new, I hope that it will not need extensive discussion, as the key elements are included.

Article 27. Work and employment

99. Although the Committee considered that subparagraph (g) could either be merged with subparagraph (c) or deleted and covered under article 21 bis (now 26) (A/60/266, annex II, para. 106), it does not seem to fit very well in either article. Accordingly I have left it in this article (now subparagraph (h)). The first part of subparagraph (j) of the Working Group text has been moved to article 8, as paragraph 2 (a) (iii) (ibid., para. 109).

Article 28. Adequate standard of living and social protection

100. I suggest that we use the term "social protection", which is very broad, as defined in the report of the Secretary-General to the Commission for Social Development at its thirty-ninth session (E/CN.5/2001/2). "Social protection" is also the term used in articles 23 (3) and 25 (2) of the Universal Declaration of Human Rights. Delegations appeared to be supporting the broadest term in this respect (A/60/266, annex II, para. 112). I hope we can resolve the issue relating to access to clean water in the manner proposed in the text, as this has become a distraction from other issues. I would draw colleagues' attention to article 14 (2) (h) of the Convention on the Elimination of All Forms of Discrimination against Women and article 24 (2) (c) of the Convention on the Rights of the Child.

101. As noted above, I have included a provision on health and life insurance in article 25 (see ibid., para. 128), but have rephrased it so that it rules out discrimination in the provision of health and life insurance, but would not rule out actuarial considerations relating to particular disabilities which was a concern of some delegations (see comment under article 25).

Article 29. Participation in political and public life

102. In subparagraph (a) (ii), I have deleted the reference to "in accordance with law", since this is superfluous.

103. The chapeau to subparagraph (b) has been redrafted (and, I hope, clarified). I would note that equality between men and women has now been included as a general principle in article 3.

104. Subparagraph (c) of the Working Group text has been consolidated along with other similar provisions into article 4 (3).

Article 30. Participation in cultural life, recreation, leisure and sport

105. In paragraph 3, I suggest we retain the reference to "intellectual property rights" which is broader — the qualifications later in the provision ("do not constitute an unreasonable or discriminatory barrier") circumscribe its application, as does making it subject to international law. In paragraph 5 (c) and (d) there was duplication in respect of sporting activities, and I have removed them from the former.

Article 31. Statistics and data collection

106. I have included the streamlined text from A/59/360, annex IV, paragraph 18, together with some language taking up the concept of compliance with ethical principles of statistics.

107. Drawing on discussion in the facilitator's group, I have also added a new paragraph 2 dealing with the usage of this information.

108. This draft article should be rapidly concluded.

Article 32. International cooperation

109. There is a large group of countries in favour of a separate article on international cooperation. A particular concern of those countries with reservations about a separate article is that international cooperation (or the lack thereof) might be used as an excuse by States for not implementing the Convention. We could overcome this by including language along the lines of "The provisions relating to international cooperation do not in any way derogate from the obligations of States to fulfil their obligations under the present Convention".

110. You will recall that at the end of our August meeting, Mexico reported back on some very useful discussions it had held, including "Principles and elements for a provision on international cooperation". This seemed to be well received, and I do hope that it will provide a basis for rapid progress on this article.

Articles 33 and 34. National implementation and monitoring and international monitoring

111. There was general agreement that we should include national monitoring and international monitoring in the text, and this will need to be discussed further at our meeting in January. I would ask colleagues to come to the January meeting with flexible instructions, as we will need to discuss specific text. As you know, a number of proposals have been made, some of them quite comprehensive.

112. I look forward to meeting with colleagues, and making considerable progress, at our next meeting in January. I expect the dates and duration of that meeting to be decided shortly by the Third Committee.

(*Signed*) Don **MacKay**
Chairman
Ad Hoc Committee on a Comprehensive and Integral
International Convention on the Protection and Promotion
of the Rights and Dignity of Persons with Disabilities

Annex I

Draft Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities

Submitted by the Chairman on the basis of discussion by the Ad Hoc Committee

The States Parties to the present Convention,

(a) *Recalling* the principles proclaimed in the Charter of the United Nations which recognize the inherent dignity and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world,

(b) *Recognizing* that the United Nations, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, has proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind,

(c) *Reaffirming* the universality, indivisibility and interdependence of all human rights and fundamental freedoms and the need for persons with disabilities to be guaranteed their full enjoyment without discrimination,

(d) *Reaffirming also* the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,

(e) *Recognizing* the importance of the principles and policy guidelines contained in the Standard Rules on the Equalization of Opportunities for Persons with Disabilities in influencing the promotion, formulation and evaluation of the policies, plans, programmes and actions at the national, regional and international levels to further equalize opportunities for persons with disabilities,

(f) *Recognizing also* that discrimination against any person on the basis of disability is a violation of the inherent dignity of the human person,

(g) *Recognizing further* the diversity of persons with disabilities,

(h) *Concerned* that, despite these various instruments and undertakings, persons with disabilities continue to face barriers in their participation as equal members of society and violations of their human rights in all parts of the world,

(i) *Recognizing* the importance of international cooperation for improving the living conditions of persons with disabilities in every country, particularly in developing countries,

(j) *Emphasizing* the existing and potential contributions made by persons with disabilities to the overall well-being and diversity of their communities, and

that the promotion of the full enjoyment by persons with disabilities of their human rights and fundamental freedoms and of full participation by persons with disabilities will result in significant advances in the human, social and economic development of their societies and the eradication of poverty,

(k) *Recognizing* the importance for persons with disabilities of their individual autonomy and independence, including the freedom to make their own choices,

(l) *Considering* that persons with disabilities should have the opportunity to be actively involved in decision-making processes about policies and programmes, especially those directly concerning them,

(m) *Concerned* about the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

(n) *Emphasizing* the need to incorporate a gender perspective in all efforts to promote the full enjoyment of human rights and fundamental freedoms by persons with disabilities,

(o) *Recognizing* that a disproportionately large number of persons with disabilities live in conditions of poverty, and mindful of the need to alleviate the negative impact of poverty on persons with disabilities,

(p) *Concerned* that situations of armed conflict have especially devastating consequences for the human rights of persons with disabilities,

(q) *Recognizing* the importance of accessibility to the physical, social and economic environment and to information and communication, including information and communication technologies, in enabling persons with disabilities to fully enjoy all human rights and fundamental freedoms,

(r) *Convinced* that a convention dealing specifically with the human rights of persons with disabilities will make a significant contribution to redressing the profound social disadvantage of persons with disabilities and promote their participation in the civil, political, economic, social and cultural spheres with equal opportunities, in both developing and developed countries,

Have agreed as follows:

Part I

Article 1
Purpose

The purpose of the present Convention is to promote, protect and fulfil the full and equal enjoyment of all human rights and fundamental freedoms of persons with disabilities.

Article 2
Definitions

For the purposes of the present Convention:

"Communication" includes oral-aural communication, communication using sign languages and Braille, and tactile communication, large print, audio, accessible multimedia, human reader and other augmentative or alternative modes of communication, including accessible information and communication technology;

["Disability"...]

["Persons with disabilities"...]

"Discrimination on the basis of disability" means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including direct and indirect discrimination;

"Language" includes oral-aural languages and sign languages;

"National laws of general application" means laws that apply to society as a whole and which do not differentiate in respect of persons with disabilities. "National laws and procedures of general application" and "national laws, customs and traditions of general application" shall have the same meaning, mutatis mutandis;

"Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;

"Universal design" and "inclusive design" mean the design of products and environments to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design.

Article 3
General principles

The fundamental principles of the present Convention shall be:

(a) Dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;

(b) Non-discrimination;

(c) Full and effective participation and inclusion in society on an equal basis with others for persons with disabilities;

(d) Respect for difference and acceptance of disability as part of human diversity and humanity;

(e) Equality of opportunity;

(f) Accessibility;

(g) Equality between men and women.

Article 4
General obligations

1. States Parties undertake to ensure the full realization of all human rights and fundamental freedoms for persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:

(a) To adopt legislative, administrative and other measures to give effect to the present Convention, and to amend, repeal or nullify any laws and regulations and to discourage customs or traditions that are inconsistent with the present Convention;

(b) To embody the rights of equality and non-discrimination on the basis of disability in their national constitutions or other appropriate legislation, if not yet incorporated therein, and to ensure, through law and other appropriate means, the practical realization of these rights;

(c) To mainstream disability issues into all economic and social development policies and programmes;

(d) To refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention;

(e) To take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise;

(f) To undertake or promote the development, availability and use of:

(i) Universally designed goods, services, equipment and facilities, to meet the specific needs of persons with disabilities, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, and to promote universal design in the development of standards and guidelines;

(ii) New technologies, including information and communication technologies, mobility aids, devices, assistive technologies, suitable for persons with disabilities, giving priority to affordably priced technologies;

(g) To provide accessible information to persons with disabilities about mobility aids, devices, and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities.

2. With regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights, except where achieving progressively the full realization of these rights would result in discrimination on the basis of disability.

3. In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities and their representative organizations. Such issues shall include standards and guidelines for accessibility, the formulation of health, habilitation and rehabilitation legislation and the

planning, the delivery and evaluation of health, habilitation and rehabilitation services and the design and implementation of data collection.

4. Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of persons with disabilities and which may be contained in the law of a State Party or international law in force for that State.

Article 5
Equality and non-discrimination

1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.

2. States Parties shall prohibit any discrimination on the basis of disability and guarantee to persons with disabilities equal and effective protection against discrimination. States Parties shall also prohibit any discrimination and guarantee to persons with disabilities equal and effective protection against discrimination on any other grounds.

3. States Parties undertake to take all appropriate steps to ensure that reasonable accommodation is provided.

4. Measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination on the basis of disability.

[Article 6
Women with disabilities]

[Article 7
Children with disabilities]

Article 8
Raising awareness regarding disability

1. States Parties undertake to adopt immediate and effective measures:

(a) To raise awareness throughout society regarding disability and persons with disabilities, and to foster respect for their rights;

(b) To combat stereotypes and prejudices about persons with disabilities in all areas of life;

(c) To promote awareness of the capabilities and contributions of persons with disabilities.

2. Measures to this end include:

(a) Initiating and maintaining effective public awareness campaigns designed:

(i) To nurture receptiveness to the rights of persons with disabilities;

(ii) To change negative perceptions and social prejudices towards persons with disabilities in all matters of [sexuality,] marriage, parenthood and family relations of persons with disabilities;

(iii) To promote recognition of the skills, merits, abilities and contributions of persons with disabilities to the workplace and the labour market;

(b) Fostering at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities;

(c) Encouraging all organs of the media to portray persons with disabilities in a manner consistent with the purpose of the present Convention;

(d) Promoting disability-sensitive awareness training programmes.

Article 9
Accessibility

1. States Parties shall take appropriate measures to ensure accessibility for persons with disabilities by identifying and eliminating obstacles to the built environment, to transportation, to information and communications, including information and communications technologies, and to other services, in order to ensure the capacity of persons with disabilities to live independently and to participate fully in all aspects of life. These measures shall apply to, inter alia:

(a) The construction and renovation of public buildings, roads and other facilities for public use, including schools, housing, medical facilities, in-door and out-door facilities and publicly owned workplaces;

(b) The development and remodelling of public transportation facilities, communications and other services, including electronic services.

2. States Parties shall also take appropriate measures:

(a) To provide in public buildings and facilities signage in Braille and easy to read and understand forms;

(b) To provide forms of live assistance and intermediaries, including guides, readers and sign language interpreters, to facilitate accessibility to public buildings and facilities;

(c) To develop, promulgate and monitor the implementation of minimum national standards and guidelines for the accessibility of public facilities and services;

(d) To ensure that private entities which provide public facilities and services take into account all aspects of accessibility for persons with disabilities;

(e) To provide training for all stakeholders on accessibility issues facing persons with disabilities;

(f) To promote access for persons with disabilities to the new communication technologies and systems, including the Internet;

(g) To promote the design, development, production and distribution of accessible information and communication technologies at an early stage, so that the information society becomes inclusive at minimum cost;

(h) To promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information.

Part II

Article 10
Right to life

States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.

[Article 11
Situations of risk

States Parties recognize that in situations of risk to the general population persons with disabilities are especially vulnerable and shall take all feasible measures for their protection.]

Article 12
Equal recognition as a person before the law

1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.

2. States Parties shall recognize that persons with disabilities have [legal capacity] on an equal basis with others in all fields and shall ensure, to the extent possible, that where support is required to exercise [that capacity] [the capacity to act]:

(a) The assistance provided is proportional to the degree of support required and tailored to the person's circumstances, that such support does not undermine the legal rights of the person, respects the will and preferences of the person and is free from conflict of interest and undue influence. Where appropriate, such support shall be subject to regular and independent review;

[(b) Where States Parties provide for a procedure, which shall be established by law, for the appointment of personal representation as a matter of last resort, such a law shall provide appropriate safeguards, including regular review of the appointment of and decisions made by the personal representative by a competent, impartial and independent tribunal. The appointment and conduct of the personal representative shall be guided by principles consistent with the present Convention and international human rights law.]

3. States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.

Article 13
Access to justice

States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, facilitating their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including the investigative and other preliminary stages.

Article 14
Liberty and security of the person

1. States Parties shall ensure that persons with disabilities, on an equal basis with others:

(a) Enjoy the right to liberty and security of person;

(b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and in no case shall the existence of a disability justify a deprivation of liberty.

2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through a civil, criminal, administrative or other process, they have at least the following guarantees:

(a) To be treated with humanity and respect for the inherent dignity and worth of the human person, and in a manner that respects their human rights, conforms with the objectives and principles of the present Convention and reasonably accommodates their disability;

(b) To be provided promptly with adequate accessible information as to their legal rights and the reasons for the deprivation of their liberty;

(c) To be provided with prompt access to legal and other appropriate assistance;

(i) To challenge the lawfulness of the deprivation of their liberty and to receive a fair hearing, including the right to be heard before a court or other competent, independent and impartial authority (in which case, they shall be provided with a prompt decision on any such action);

(ii) To seek review on an equal basis with others of the deprivation of their liberty, including periodic review as appropriate;

(d) To have an enforceable right to compensation in the case of unlawful deprivation of liberty.

Article 15
Freedom from torture or cruel, inhuman or degrading treatment or punishment

1. No person with disabilities shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, States Parties shall prohibit, and protect persons with disabilities from, medical or scientific experimentation without the free and informed consent of the person concerned.

2. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

Article 16
Freedom from exploitation, violence and abuse

1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities both within and outside the home, from all forms of exploitation, violence and abuse.

2. States Parties shall also take all appropriate measures to prevent exploitation, violence and abuse by ensuring, inter alia, appropriate forms of assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse.

3. In order to prevent the occurrence of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.

4. States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person.

5. States Parties shall put in place effective legislation and policies to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.

Article 17
Protecting the integrity of the person

1. States Parties shall protect the integrity of the person of persons with disabilities on an equal basis with others.

2. States Parties shall protect persons with disabilities from forced interventions or forced institutionalization aimed at correcting, improving or alleviating any actual or perceived impairment.

3. In cases of medical emergency or issues of risk to public health involving involuntary interventions, persons with disabilities shall be treated on an equal basis with others.

[4. States Parties shall ensure that involuntary treatment of persons with disabilities is:

(a) Minimized through the active promotion of alternatives;

(b) Undertaken only in exceptional circumstances, in accordance with procedures established by law and with the application of appropriate legal safeguards;

(c) Undertaken in the least restrictive setting possible, and that the best interests of the person concerned are fully taken into account;

(d) Appropriate for the person and provided without financial cost to the individual receiving the treatment or to his or her family.]

Article 18
Liberty of movement

[States Parties shall take effective measures to respect and ensure the rights of persons with disabilities to liberty of movement on an equal basis with others, including by ensuring that persons with disabilities:

(a) Have the right to acquire a nationality and are not deprived of their nationality arbitrarily or on the basis of disability;

(b) Are not deprived, on the basis of disability, of their ability to posses and utilize documentation of their nationality or other documentation of identification, or to utilize relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement;

(c) Are free to leave any country, including their own.]

Article 19
Living independently and being included in the community

States Parties shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of their freedom of choice, living independently and full inclusion and participation in the community, including by ensuring that:

(a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;

(b) Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;

(c) Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.

Article 20
Personal mobility

States Parties shall take effective measures to ensure liberty of movement with the greatest possible independence for persons with disabilities, including:

(a) Facilitating the freedom of movement of persons with disabilities in the manner and at the time of their choice, and at affordable cost;

(b) Facilitating access by persons with disabilities to high-quality mobility aids, devices, assistive technologies and forms of live assistance and intermediaries, including by making them available at affordable cost;

(c) Providing training in mobility skills to persons with disabilities and to specialist staff working with persons with disabilities;

(d) Encouraging private entities that produce mobility aids, devices and assistive technologies to take into account all aspects of mobility for persons with disabilities.

Article 21
Freedom of expression and opinion, and access to information

States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise their right to freedom of expression and opinion, including

the freedom to seek, receive and impart information and ideas on an equal basis with others and through sign languages, and Braille, and augmentative alternative communication and all other accessible means, modes and formats of communication of their choice, including by:

(a) Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;

(b) Accepting and facilitating the use of sign languages, and Braille, and augmentative alternative communication and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;

(c) Urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities;

(d) Urging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities;

(e) [[Developing] [Recognizing] [Promoting] a national sign language.]

Article 22
Respect for privacy

1. No person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence or other types of communication or to unlawful attacks on his or her honour and reputation. Persons with disabilities have the right to the protection of the law against such interference or attacks.

2. States Parties shall protect the privacy of personal, health and rehabilitation information of persons with disabilities on an equal basis with others.

Article 23
Respect for the home and the family

1. States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family and personal relations, and in particular shall ensure, on an equal basis with others:

(a) That persons with disabilities are not denied the equal opportunity to [experience their sexuality,] have sexual and other intimate relationships and experience parenthood [in accordance with national laws, customs and traditions of general application];

(b) That the right of all [men and women] [persons] with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognized [and that spouses should be equal partners];

(c) The rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children [and to have access to information, reproductive and family planning education, the means necessary to enable them to

exercise these rights and the equal opportunity to retain their fertility to the extent that these are permitted by national laws of general application].

2. States Parties shall ensure the rights and responsibilities of persons with disabilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount. States Parties shall render appropriate assistance to disabled persons in the performance of their child-rearing responsibilities.

3. States Parties shall ensure that a child is not separated from his or her parents against their will, except when competent authorities determine, in accordance with national laws and procedures of general application and subject to judicial review or other forms of administrative review as established by law, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.

Article 24
Education

1. States Parties recognize the right of persons with disabilities to education. With a view to achieving this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education at all levels and life-long learning, directed to:

(a) The full development of the human potential and sense of dignity and self worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;

(b) The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;

(c) Enabling persons with disabilities to participate effectively in a free society.

2. In realizing this right, States Parties shall ensure:

(a) That persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary and secondary education on the basis of disability;

(b) That persons with disabilities can access inclusive, quality, free primary and secondary education to the extent possible in the communities in which they live;

(c) Reasonable accommodation of the individual's requirements;

(d) That persons with disabilities receive the support required, within the general education system, to facilitate their effective education. In exceptional circumstances where the general education system cannot adequately meet the support needs of persons with disabilities, States Parties shall ensure that effective alternative support measures are provided, consistent with the goal of full inclusion;

(e) The development of initial and continuing training, which incorporates disability awareness, the use of appropriate communication means and modes, educational techniques and materials to support persons with disabilities, for all professionals and staff who work at all levels of education.

3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall:

(a) Facilitate the learning of Braille, alternative script, orientation and mobility skills, and facilitate peer support and mentoring;

(b) Facilitate the learning of sign language and the promotion of the linguistic identity of the deaf community;

(c) Ensure that the education of children who are blind, deaf and deaf/blind is delivered in the most appropriate languages and modes of communication for the individual, and in environments which maximize academic and social development.

4. States Parties shall take appropriate measures to ensure quality education to students with sensory disabilities through the employment of teachers who are fluent in sign language or Braille, including teachers with disabilities.

5. States Parties shall ensure that persons with disabilities may access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on the basis of equality of opportunity. To that end, States Parties shall render appropriate support to persons with disabilities.

Article 25
Health

States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of physical and mental health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services, including health-related rehabilitation. In particular, States Parties shall:

(a) Provide persons with disabilities with the same range and standard of affordable health services as provided other persons, [including sexual and reproductive health services] and population-based public health programmes;

(b) Provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and the elderly;

(c) Provide these health services as close as possible to people's own communities, including in rural areas;

(d) Require health professionals to provide care of the same quality to persons with disabilities as to others and on the basis of free and informed consent by, where necessary, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care;

(e) Prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where permitted by national law, which shall be provided in a fair and reasonable manner.

Article 26
Habilitation and rehabilitation

1. States Parties shall take effective and appropriate measures to enable persons with disabilities to attain their maximum independence, fullest physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life. To that end, States Parties shall organize, strengthen and extend comprehensive habilitation and rehabilitation services, particularly in the areas of health, employment, education and social services, in such a way that:

(a) Habilitation and rehabilitation services and programmes begin at the earliest possible stage, and are based on the multidisciplinary assessment of individual needs;

(b) Habilitation and rehabilitation services and programmes support participation and inclusion in the community and all aspects of society, and are available to persons with disabilities as close as possible to their own communities, including in rural areas.

2. States Parties shall promote the development of initial and continuing training for professionals and staff working in habilitation and rehabilitation services.

Article 27
Work and employment

States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall set an example through employment of persons with disabilities in the public sector, and shall take other appropriate steps to safeguard and promote the realization of the right to work, including measures:

(a) To protect through legislation persons with disabilities with regard to conditions of recruitment, hiring and employment, continuance of employment, career advancement, working conditions, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions and the redressing of grievances;

(b) To ensure that persons with disabilities are able to exercise their labour and trade union rights in accordance with national laws of general legislation;

(c) To enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;

(d) To promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining and maintaining and returning to employment;

(e) To promote opportunities for self-employment, entrepreneurship and starting one's own business;

(f) To encourage employers to hire persons with disabilities through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;

(g) To ensure that reasonable accommodation is provided to persons with disabilities in the workplace;

(h) To promote the acquisition by persons with disabilities of work experience in the open labour market;

(i) To promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.

Article 28
Adequate standard of living and social protection

1. States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing and to the continuous improvement of living conditions, including access to clean water, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.

2. States Parties recognize the right of persons with disabilities to social protection, and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:

(a) To ensure access by persons with disabilities to appropriate and affordable services, devices and other assistance for disability-related needs;

(b) To ensure access by persons with disabilities, [in particular women and girls with disabilities and the aged with disabilities,] to social protection programmes and poverty reduction strategies;

(c) To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State to cover disability-related expenses (including adequate training, counselling, financial assistance and respite care), which should not become a disincentive to develop themselves;

(d) To ensure access by persons with disabilities to public housing programmes.

Article 29
Participation in political and public life

States Parties shall guarantee to persons with disabilities their political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake:

(a) To ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others in accordance with national laws of general application, directly or through freely chosen

representatives, including the right and opportunity for persons with disabilities to vote and be elected, by:

(i) Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;

(ii) Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums, without intimidation, and to stand for elections and to hold office and perform all public functions at all levels of government;

(iii) Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;

(b) To promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including:

(i) Participation in non-governmental organizations and associations concerned with the public and political life of the country, including the activities and administration of political parties;

(ii) Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.

Article 30
Participation in cultural life, recreation, leisure and sport

1. States Parties recognize the right of persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities:

(a) Enjoy access to cultural materials in all accessible formats;

(b) Enjoy access to television programmes, films, theatre, and other cultural activities, in all accessible formats;

(c) Enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and tourism services, and, as far as possible, enjoy access to monuments and sites of national cultural importance.

2. States Parties shall take appropriate measures to enable persons with disabilities to have the opportunity to develop and utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of society.

3. States Parties shall take all appropriate steps to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials, while respecting the provisions of international law.

4. Persons with disabilities shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including sign languages and deaf culture.

5. With a view to enabling persons with disabilities to participate on an equal basis with others in recreational, leisure and sporting activities, States Parties shall take appropriate measures:

(a) To encourage and promote the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at all levels;

(b) To ensure that persons with disabilities have an opportunity to organize, develop and participate in disability-specific sporting and recreational activities, and to this end, encourage the provision, on an equal basis with others, of appropriate instruction, training and resources;

(c) To ensure that persons with disabilities have access to sporting and recreational and tourism venues;

(d) To ensure that children with disabilities have equal access to participation in play, recreation, and leisure and sporting activities, including those in the school system;

(e) To ensure that persons with disabilities have access to services from those involved in the organization of recreational, tourism, leisure and sporting activities.

Part III

Article 31
Statistics and data collection

1. Where necessary, States Parties undertake to collect appropriate information, including statistical data, to enable them to formulate and implement policies to give effect to the present Convention. The process of collecting and maintaining this information should:

(a) Comply with legally established safeguards to ensure confidentiality and respect for the privacy of persons with disabilities, including legislation on data protection;

(b) Comply with internationally accepted norms to protect human rights and fundamental freedoms and ethical principles of statistics.

2. The information collected in accordance with this article shall be used to help assess the implementation of States Parties obligations under the present Convention, and shall also be used to identify and address the barriers faced by persons with disabilities in exercising their rights.

[Article 32
International cooperation]

Article 33
National implementation and monitoring

[1. States Parties shall designate a focal point within government for matters relating to the implementation of the present Convention, and give due consideration to the establishment or designation of a coordination mechanism to facilitate related action in different sectors and at different levels.

2. States Parties shall, in accordance with their legal and administrative system, maintain, strengthen, designate or establish at the national level a framework to promote, protect and monitor implementation of the rights recognized in the present Convention.]

3. Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in all levels of the monitoring process.

Article 34
International monitoring

Part IV

Article ___
Signature

The present Convention shall be open for signature by all States.

Article ___
Ratification

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article ___
Accession

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article ___
Entry into force

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the present Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article ___
Amendment

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United

Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article ___
Reservations

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.

Article ___
Dispute settlement

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention that is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of the present article. The other States Parties shall not be bound by that paragraph with respect to any State Party that has made such a declaration.

3. Any State Party that has made a declaration in accordance with paragraph 2 of the present article may at any time withdraw that declaration by notification to the Secretary-General of the United Nations.

Article ___
Depositary

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article ___
Authentic texts

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

The Secretary-General of the United Nations shall transmit certified copies of the present Convention to all States.

IN WITNESS THEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

Annex II

Old and new structures of the draft Convention

A. Old structure

Old article		*New article*
1	Purpose	1
2	General principles	3
3	Definitions	2
4	General obligations	4
5	Promotion of positive attitudes	8
6	Statistics and data collection	31
7	Equality and non-discrimination	5
8	Right to life	10
8 bis	Situations of risk	11
9	Equal recognition as a person before the law	12
9 bis	Access to justice	13
10	Liberty and security of the person	14
11	Freedom from torture or cruel, inhuman or degrading treatment or punishment	15
12	Freedom from exploitation, violence and abuse	16
12 bis	Protecting the integrity of the person	17
13	Freedom of expression	21
14	Respect for privacy	22
14 bis	Respect for home and family	23
15	Living independently	19
15 bis	Women with disabilities	6
16	Children with disabilities	7
17	Education	24
18	Participation in political and public life	29
19	Accessibility	9
20	Personal mobility	20
20 bis	Liberty of movement	18
21	Health	25
21 bis	Habilitation and rehabilitation	26
22	Work and employment	27
23	Adequate standard of living and social protection	28
24	Participation in cultural life	30

24 bis	International cooperation	32
25	National implementation and monitoring	33
25 bis	International monitoring	34

B. New structure

New article		*Old article*
	Preamble	
	Part I	
1	Purpose	1
2	Definitions	3
3	General principles	2
4	General obligations	4
5	Equality and non-discrimination	7
6	[Women with disabilities]	15 bis
7	[Children with disabilities]	16
8	Raising awareness regarding disability	5
9	Accessibility	19
	Part II	
10	Right to life	8
11	[Situations of risk]	8 bis
12	Equal recognition as a person before the law	9
13	Access to justice	9 bis
14	Liberty and security of the person	10
15	Freedom from torture or cruel, inhuman or degrading treatment or punishment	11
16	Freedom from exploitation, violence and abuse	12
17	Protecting the integrity of the person	12 bis
18	Liberty of movement	20 bis
19	Living independently and being included in the community	15
20	Personal mobility	20
21	Freedom of expression and opinion, and access to information	13
22	Respect for privacy	14
23	Respect for the home and the family	14 bis
24	Education	17
25	Health	21

26	Habilitation and rehabilitation	21 bis
27	Work and employment	22
28	Adequate standard of living and social protection	23
29	Participation in political and public life	18
30	Participation in cultural life, recreation, leisure and sport	24
	Part III	
31	Statistics and data collection	6
[32	International cooperation]	24 bis
33	National implementation and monitoring	25
34	International monitoring	26
	Part IV	
–	Signature	[new]
–	Ratification	[new]
–	Accession	[new]
–	Entry into force	[new]
–	Amendment	[new]
–	Reservations	[new]
–	Dispute settlement	[new]
–	Depositary	[new]
–	Authentic texts	[new]